

## Update: Traffic Benchbook— Third Edition, Volume 3

### CHAPTER 1

#### Introduction to Vehicle Code §625 and §904

#### 1.3 Definitions Commonly Used in §625 and §904 of the Vehicle Code

##### F. “Operating” a Vehicle

Insert the following text after the first paragraph near the bottom of page 9:

The Michigan Supreme Court considered the proper interpretation of the definition of “operate” in the Michigan Vehicle Code in *People v Yamat*, 475 Mich 49 (2006). The Court held that “the plain language of the statute requires only ‘actual physical control,’ not exclusive control of a vehicle.” *Id.* at 51.

The *Yamat* case arose when the defendant, a front-seat passenger in another person’s vehicle, grabbed the steering wheel and turned it without the driver’s permission. *Yamat*, *supra* at 51. The defendant was charged with one count of felonious driving, but the district court refused to bind the defendant over for trial “because it concluded that the prosecution had not established that the statute proscribed defendant’s conduct.” *Id.* at 51–52. The circuit court affirmed this ruling, noting that the “defendant did not have *complete control* of the vehicle’s movement.” *Id.* at 52 (emphasis in original). The Court of Appeals also affirmed this ruling, holding that the defendant “was merely interfering with [the driver’s] operation of the vehicle, but was not operating the vehicle himself.” *Id.* The Michigan Supreme Court, however, reversed this ruling, finding that “the plain language of the statute requires only ‘actual control,’ not exclusive control,” and that “[the] defendant’s act of grabbing the steering wheel and thereby causing the car to veer off the road clearly constitute[d] ‘actual physical control of a motor vehicle.’” *Id.* at 51, 57 (footnote omitted).

## CHAPTER 3

### Section 625 Offenses

#### 3.5 OWI or OWVI Causing Serious Impairment of a Body Function—§625(5)

##### B. Elements

**4. The defendant's operation of the motor vehicle caused another person to suffer serious impairment of a body function.**

Insert the following text after the October 2005 update to page 137:

In *People v Derror (Derror II)*, \_\_\_ Mich \_\_\_, \_\_\_ (2006), the Supreme Court clarified that its decision in *People v Schaefer*, 473 Mich 418 (2005), also applies in cases involving violations of MCL 257.625(5).

Said the *Derror II* Court with regard to MCL 257.625(5):

“We ... agree that *Schaefer's* holding applies to subsections 4 and 5 alike. The Court of Appeals stated, and we agree, that no reason exists to interpret the identical language of MCL 257.625(5) differently from MCL 257.625(4).” *Derror II, supra* at \_\_\_.

## CHAPTER 3

### Section 625 Offenses

#### 3.8 Operating With the Presence of Drugs—§625(8)

##### B. Elements

**2. At the time the defendant operated the vehicle, “any amount of a controlled substance” was present in the defendant’s body.**

In *People v Derror (Derror II)*, \_\_\_ Mich \_\_\_, \_\_\_ (2006), the Supreme Court reversed the Court of Appeals decision in *People v Derror (On Reconsideration)(Derror I)*, 268 Mich App 67 (2005), and held that 11-carboxy-THC is a schedule 1 controlled substance. Therefore, delete the October 2005 update to page 148 and insert the following case summary in its place:

The defendant in this case was the driver in a head-on collision that killed one person, paralyzed two more, and less-seriously injured another. *Derror II, supra* at \_\_\_\_\_. The defendant admitted smoking marijuana four hours before the accident, and blood tests taken shortly after the accident showed that the defendant had 11-carboxy-THC, a metabolite of THC, the psychoactive ingredient of marijuana, in her system at the time of the accident. *Id.* at \_\_\_\_\_. At trial, the court held that 11-carboxy-THC is not a schedule 1 substance, but that presence of the substance in the defendant’s blood was admissible as circumstantial evidence to establish that the defendant at some time ingested THC, which is a schedule 1 controlled substance. *Id.* at \_\_\_\_\_. The defendant was convicted of operating a motor vehicle with the presence of a schedule 1 controlled substance in her body, causing death and serious injury (MCL 257.625(5)). *Id.* at \_\_\_\_\_. The Court of Appeals affirmed the trial court’s ruling that 11-carboxy-THC was not a schedule 1 substance. *Derror II, supra* at \_\_\_\_\_. The Supreme Court, however, reversed this ruling. According to the Court:

“Because 11-carboxy-THC qualifies as a derivative, and since derivatives are included within the definition of marijuana, which MCL 333.7212(1)(c) specifically lists as a schedule 1 controlled substance, we hold that 11-carboxy-THC is a schedule 1 controlled substance under MCL 333.7212(1)(c) for the purpose of MCL 257.625(8).” *Derror II, supra* at \_\_\_\_\_.

In addition to its ruling regarding 11-carboxy-THC, the *Derror II* Court also clarified that its ruling in *People v Schaefer*, 473 Mich 418 (2005), also applies in cases involving violations of MCL 257.625(8). *Derror II, supra* at \_\_\_\_\_. In *Schaefer, supra*, the Court ruled that the causation element of MCL 257.625(4) requires only that a defendant’s operation of a motor vehicle—not a defendant’s operation of a vehicle as affected by the defendant’s state of intoxication—be a factual and proximate cause of the harm resulting from the

\*Other *Lardie* holdings were not disturbed by *Schaefer*. *Schaefer, supra* at 422 n 4.

statutory violation. *Schaefer, supra* at 446. In the consolidated cases decided in *Schaefer*, the Michigan Supreme Court overruled *People v Lardie*, 452 Mich 231 (1996), to the extent that *Lardie* concluded the statute required that a defendant's driving as affected by his or her intoxication be a substantial cause of the victim's death.\* *Schaefer, supra* at 422, 433–34, 446.

The *Schaefer* Court explained:

“The plain text of §625(4) does not require that the prosecution prove the defendant's intoxicated state affected his or her operation of the motor vehicle. Indeed, §625(4) requires no causal link at all between the defendant's intoxication and the victim's death....

“Quite simply, by enacting §625(4), the Legislature intended to punish ‘operating while intoxicated,’ not ‘operating in an intoxicated manner.’” *Schaefer, supra* at 422.

The *Schaefer* Court explained that the causation element of §625(4) must be construed “according to the actual text of the statute[:].”

“Section 625(4) plainly requires that the victim's death be caused by the defendant's *operation* of the vehicle, not the defendant's *intoxicated* operation. Thus, the manner in which the defendant's intoxication affected his or her operation of the vehicle is unrelated to the causation element of the crime. The defendant's status as ‘intoxicated’ is a separate element of the offense used to identify the class of persons subject to liability under §625(4).” *Schaefer, supra* at 433 (emphasis in original).

A prosecuting attorney must prove that a defendant's operation of a motor vehicle was a factual cause of a victim's death: that “but for” the defendant's operation of the vehicle, the victim's death would not have occurred. A prosecuting attorney must also prove that the defendant's operation of the vehicle was a proximate cause of the victim's death: that the victim's death was a direct and natural result of the defendant's operation of the vehicle. It must also be determined that no intervening cause severed the causal link between the defendant's operation of the vehicle and the victim's death. An intervening cause is sufficient to sever that causal link if it was not reasonably foreseeable. An act of God or a victim's or third party's gross negligence or intentional conduct is generally unforeseeable and thus a sufficient intervening cause; ordinary negligence is foreseeable and thus not a sufficient intervening cause. *Id.* at 435–39.

The Michigan Supreme Court, in *Derror II, supra*, extended this reasoning to MCL 257.625(8). *Derror II, supra* at \_\_\_\_.

Said the *Derror II* Court with regard to MCL 257.625(8):

“The plain language of MCL 257.625(8) does not require the prosecution to prove beyond a reasonable doubt that a defendant knew he or she might be intoxicated. MCL 257.625(8) does not require intoxication, impairment, or knowledge that one might be intoxicated; it simply requires that the person have ‘any amount’ of a schedule 1 controlled substance in his or her body when operating a motor vehicle. We thus clarify *Schaefer* and hold that, in prosecutions involving violations of subsection 8, the prosecution is not required to prove beyond a reasonable doubt that a defendant knew he or she might be intoxicated.” *Derror II*, *supra* at \_\_\_\_.

## CHAPTER 7

### Felony Offenses in the Motor Vehicle Code

#### 7.10 Felonious Driving

##### E. Issues

In *People v Yamat*, 475 Mich 49, 51 (2006), the Supreme Court overturned the Court of Appeals' definition of the term "operate" as that term is used in the Michigan Vehicle Code, MCL 257.1 et seq. Replace the text in this subsection beginning with the partial paragraph at the bottom of page 209 and continuing through the block quote in the middle of page 210 with the following:

A defendant was operating a motor vehicle for purposes of MCL 275.626c when, while he was a front-seat passenger in another person's vehicle, the defendant grabbed the steering wheel and turned it without the driver's permission. *Yamat*, *supra* at 51. In reaching its decision, the *Yamat* Court held that "the plain language of [MCL 275.626c] requires only 'actual physical control,' not exclusive control of a vehicle." *Yamat*, *supra* at 51.

The Court explained:

"Defendant was a passenger in the vehicle his girlfriend was driving. As she drove, the couple argued. During the argument, defendant grabbed the steering wheel and turned it. When the defendant wrenched the steering wheel, the vehicle veered off the road, struck a jogger and caused the jogger severe injuries.

\* \* \*

"As applied to the facts of this case, defendant's act of grabbing the steering wheel and thereby causing the car to veer off the road clearly constitutes 'actual physical control of a motor vehicle.'" *Id.* at 51, 57.